

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

FILE NO.: CDUA HA-3445
REF: OCCL: MC
Acceptance Date: October 17, 2007
180 Exp. Date: April 14, 2008

March 28, 2008

REGARDING: Single Family Residence

APPLICANT: James and Francine McCully
40 Kamehameha Avenue
Hilo, HI 96720

AGENT: B. Ben Tsukazaki
Tsukazaki, Yeh, & Moore
85 W. Lanikaula St.
Hilo, HI 96720

LOCATION: Wailea, South Hilo, Hawaii

TMK: (3) 2-9-03:29

AREA OF PARCEL: 2.829 acres

AREA OF USE: 7,000 square feet, enclosed area (residence)
20,635 square feet, landscaped areas

SUBZONE: Resource

DESCRIPTION OF AREA:

The proposed project area is located on a 2.829-acre coastal lot in Wailea, South Hilo District, Hawaii, TMK (3) 2-9-03:29. It is in the Resource Subzone of the State Land Use Conservation District (see **Exhibit 1**).

The coastal parcel is approximately 14.7 miles north of Hilo. It is bounded on the makai side by a 100 to 140 foot pali, on the north by a steep gulch and Pū'ahanui Stream, and on the west by

four parcels in the Agriculture District. The pali and stream render the property inaccessible from these ends, and access is via a 360-foot long easement running off the Hawai'i Belt Road.

The land is currently vacant. It had previously been used for sugar cane cultivation, and has remained fallow since 1992. The parcel is currently dominated by grass, with a stand of eucalyptus, ironwood, and hala along the pali. There are scattered collections of bamboo and ornamentals on the property.

In a botanical survey, the only native plants found were kukui and hala trees, and popolo berry bushes. There were no threatened or endangered species found.

No faunal survey was conducted, but the applicant states that it is unlikely that threatened or endangered species will be found, given the parcel's 100-year history of agriculture use.

There are no known traditional Hawaiian cultural practices currently being practiced on the parcel. There are no safe access points to the ocean from the bluff, and the bluff itself is too high to fish from.

There are no other known archaeological features.

PROPOSED PROJECT:

The applicant is proposing to build a single-family residence and associated landscaping. The dwelling consists of a 3 bedrooms, 3.5 bathrooms, 3 lanai, a central courtyard, garage, and kitchen.

The applicants' calculations provide a developed area of 4690 square feet. OCCL has concerns regarding many of the enclosed areas that were excluded from this calculation. OCCL calculations show an enclosed area of 7019 square feet, and a Developed Area of 6014 square feet. This will be discussed in depth in the Discussion section.

Exhibit 2 shows the exterior plans for the residence.

Grading for the project will involve 1200 cubic yards of cut. According to the information provided, this is due in part to accommodate the maximum setback from the shoreline pali and in part to decrease the visibility of the residence from the road. **Exhibit 3** shows the grading plans for the parcel.

The proposed landscaping involves a mix of native and ornamental plants. The plans call for the trees along the pali to remain, and a boundary of small canopy trees and palms. The main part of the lawn will remain grassy. Plants that the applicant proposes to use include:

- Hawaiian tree ferns, 'ohi'a, ginger, heliconia, gardenia, and ti in the courtyard;
- Small canopy trees such as plumeria, puakenikeni, dodnea, Hong Kong orchid along the north side of the dwelling;

- Monstera, spider lily, ti, heliconia, palms, and cycads, also on the north side of the dwelling;
- Pritchardia palms to the east;
- "Various native plants" along the makai edge of the property;
- A large flowering canopy tree to the south of the dwelling; and
- More palms to the south.

Exhibit 4 shows the site plan and landscaping plan.

AGENCY COMMENTS:

The CDUA and Draft Environmental Assessment were referred for review and comment to the DLNR – Division of Forestry and Wildlife, Historic Preservation Division, Land Division; Hawai'i County Planning Department, Hawai'i County Department of Public Works, and the Office of Hawaiian Affairs.

A copy of the CDUA and DEA were available for review at the Hilo Public Library .

A notice of the application was placed in the Office of Environmental Quality Control's *Environmental Notice* on November 8, 2007. OCCL issued a FONSI and noticed this in the February 8, 2008 edition.

The following comments were received:

Office of Hawaiian Affairs (OHA)

The archaeological assessment satisfies OHA's concerns for the immediate protection of cultural resources.

OHA notes that ground disturbance always carries with it the possibility of unearthing cultural resources. OHA also requests, should iwi or Native Hawaiian cultural or traditional deposits be found work will cease and both State Historic Preservation Division and OHA be contacted.

Applicant Response

Applicant affirms that, should Hawaiian cultural or traditional deposits be found, they would cease work and notify the appropriate agencies.

DLNR – Land Division

No comments

DLNR – Division of Forestry and Wildlife

No comments

County of Hawai'i Planning Department

The applicant states that the amount of grading is justified to visually blend the dwelling into the site, but does not state whether a post-and-pier foundation would be visible from the roads and neighboring parcels. A post-and-pier foundation would require less grading.

The Department had determined that the project was exempt from SMA requirements subject to the condition that a construction barrier be placed 40 feet inland from the top of the pali, and that no land altering, grubbing, landscaping, or construction activities will occur seaward of that boundary. The current CDUA application shows that fill material will be placed ten feet seaward of this boundary. The CDUA should be modified to bring it into compliance.

Applicant's Response

The applicant does not consider the amount of grading required for the project to be 'extensive.' Nevertheless, the applicant has modified the plans so that no land alteration will occur seaward of the construction barrier. The revised project involves 1200 cubic yards of cut and 699 cubic yards of fill.

It is unknown whether a residence on a post-and-pier foundation would be visible from the highway. It is unlikely, given the dense foliage and high trees backing the parcel. However, the applicant believes that such a structure would be visible from the sea.

DLNR – Office of Conservation and Coastal Lands

At the end of the comment period OCCL notified the applicant that the MDA calculations needed to include the entry lanai, the paved and/or roofed areas in the gardens and courtyard, and the makai lanai.

OCCL also requested further information regarding how the cut and fill will be managed. OCCL recommends that the applicant contact the Department of Health (DOH) to determine if they require any additional permits.

Applicant's Response

The applicant has revised the grading plans in light of comments from the Planning Department, and included textual revisions discussing the potential impacts. The grading will trigger the need for a permit from the Department of Public Works – Engineering Division, but will not need an NPDES permit from DOH. Retaining walls will be used to mitigate potential runoff.

In regards to the project's dimensions, the applicant states that based upon the language of Exhibit 4 ... as well as the architect's consultation meetings with you, we do not agree that the entry lanai, the mauka lanai/garden, the mauka garden/shower area, the area around the central courtyard or the makai lanai should be included in the calculation of the Maximum Developed Area (the "MDA").

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated October 26, 2007 that:

1. The SFR was an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24 *Identified land uses in the resource subzone, R-8 Single Family Residence, (D-1)*; that this use required a permit from the DLNR; and that the final decision as to whether to grant or deny the permits lay with the Board of Land and Natural Resources (BLNR).
2. Pursuant to HAR §13-5-40 *Hearings*, no public hearing was required.
3. Pursuant to HAR §13-5-31 *Permit applications*, the permit required that an environmental assessment be carried out.

The draft environmental assessment (DEA) for the project was submitted to the Office of Environmental Quality Control (OEQC) and published in the November 8, 2007 issue of the *Environmental Notice*. A Finding of No Significant Impact (FONSI) was published in the OEQC's *Environmental Notice* on February 8, 2008. The 30-day challenge period for the FONSI ended March, 2008 without a challenge.

§13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR §13-5-30.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed use is an identified land use in the Conservation District. Staff has concerns regarding the dimensions of the proposed use; this will be discussed in the next section.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Resource Subzone is *to develop, with proper management, areas to ensure sustained use of the natural resources of those areas*

Staff notes that the state has established residential standards for residences in the Conservation District that are designed to promote proper management of Conservation lands. While the proposed land use is consistent with the objectives of the resource subzone, proper management mandates that the use complies with these guidelines. Staff is concerned that the proposal exceeds the maximum allowable developable area as

outlined in HAR §13-5 Exhibit 4, and that grading has not been kept to a minimum as also required by Exhibit 4.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The project complies with the policies and objectives of the Coastal Zone Management Program.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented. Staff notes that the proposed project will not detract from the rural character of the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the design of the proposed SFR will fit into the locality and surrounding areas, with the use of Best Management Practices and without significant or deleterious effects to the locality, surrounding area and parcel. As stated above and which will be discussed below, staff does not feel that the size of the structure is comports to the Residential Standards according to HAR §13-5.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

DISCUSSION:

The applicant proposes to build a single family residence at Wailea in the District of South Hilo, approximately 14.7 miles north of Hilo. The 2.829 acre coastal property is in the Resource Subzone of the State Land Use Conservation District. The parcel was previously used for sugar cane cultivation, but has been fallow since 1992.

There are no known significant archaeological, cultural, recreational, or historical resources on the property.

OCCL and the applicant disagree on whether the proposed design of the residence is consistent with the HAR §13-5, EXHIBIT 4, SINGLE FAMILY RESIDENTIAL STANDARDS. OCCL maintains that the proposed design exceeds the *Maximum Developable Area* (MDA) and the *Compatibility Provisions* as defined in Exhibit 4.

Pursuant to §13-5, *Maximum Developable Area means the total floor area in square feet allowed under the approved land use. The floor area computation should include (on three sides minimum, with floor or roof structure above) living areas; above grade decks in excess of 4'0" in width; garage or carport; swimming pools, saunas or other developed water features (excluding naturally existing ponds, tidepools, etc.); play courts; or any other standing structures, which are accessory to the approved land use.*

The MDA for lots greater than one acre is 5000 square feet.

Pursuant to HAR §13-5 *Compatibility Provisions: Grading / contouring of property (is) kept to a minimum with consideration of slope.* OCCL interprets this to mean that a project should favor a design that minimizes the amount of cut and fill needed.

The proposed dwelling consists of a 3 bedrooms, 3.5 bathrooms, 2 lanai, a central courtyard, 2 enclosed gardens, a garage, an 'entry lanai,' and a living room. **Exhibit 5** shows the floor plan submitted by the applicant.

The total area enclosed by all exterior walls totals 7019 square feet. The applicant calculates the Maximum Developed Area to be 4690 square feet. This includes 4162 square feet of "enclosed area" in the main residence and the 528 square foot garage. The calculations excluded a 655 square foot interior courtyard, 750 square feet of walled garden and lanai, 360 square feet of elevated lanai, and the 564 square foot 'entry lanai.'

OCCL maintains that many of these features need to be included in calculating the Maximum Developed Area. These are:

- **The Makai Lanai:** The makai lanai rests four to five feet above the natural grade. The area would be backfilled to create a man-made grade. OCCL does not consider lanai resting on man-made grades to be at grade, and does not believe that creating a grade is consistent with HAR §13-5 Exhibit 4. OCCL thus counts these as above-grade lanai for the purposes of calculating MDA. *OCCL would thus add 360 (based upon floor*

dimensions) to 400 (based upon area under roof) square feet to the calculations. This alone would bring the proposed residence over the allowable MDA.

- **The Loggia:** OCCL considers the interior courtyard to be an enclosed space. Approximately 30% of this appears to be under roof, forming a loggia or semi-open corridor alongside it. The loggia should be included. Conservatively, *OCCL would add 200 square feet to the calculations.*
- **Entry Lanai / Porte-Cochère:** The entry lanai, a paved and roofed area connecting the garage to the main residence, has all the appearance of a porte-cochère, which OCCL has traditionally included in calculating the MDA. As it functions as an extension of both the garage and the main residence, OCCL would include it in the calculations for an additional 564 square feet.
- **Enclosed Gardens:** There are two private gardens accessed from the bedrooms which are created through grading, enclosed by high rock walls, and partially roofed. Garden 1 contains a shower, while Garden 2 contains a 129 square-foot stone/concrete lanai that is under roof¹. The gardens total 750 square feet; OCCL conservatively estimates that approximately 20% of the gardens are under roof. *OCCL would thus add 200 square feet to the calculations.*

Exhibit 6 contains OCCL's calculations. **Exhibit 7** shows a color schemata outlining the areas that the applicant included in the MDA, areas that OCCL would include in the MDA, and other enclosed areas not included in the MDA. **Exhibit 8** is the Roof Plan provided by the applicant.

OCCL's calculations show a Developed Area of 6014 square feet, which is in excess of the 5000 square feet allowed under HAR §13-5.

Grading for the project will involve 1200 cubic yards of cut. According to the information provided by the applicant, this is due in part to accommodate the maximum setback from the shoreline pali and in part to decrease the visibility of the residence from the road. OCCL accepts that these site-specific characteristics will create a greater amount of fill than what might normally be expected for a residence.

However, OCCL also notes that the residence has 7019 square feet of enclosed area, and that this footprint also contributes to the amount of cut needed. OCCL does not believe that this is keeping the amount of contouring to a minimum, as required by HAR §13-5.

In addition, contouring is being proposed to create a man-made grade to support a lanai. If the lanai were on post-and-pier it would count towards figuring the MDA; cutting and filling to create a grade in an attempt to circumvent this rule is not *keeping grading* to a minimum as mandated in HAR §13-5 Exhibit 4.

¹ While the Site Plan labels the gardens as "no roof," the Roof Plan shows the roof extending over significant portions of both gardens.

OCCL does note that the applicant will need to secure a grading permit from the Department of Public Works (DPW), Engineering Division prior to commencing work. We will request that a condition of any Conservation District Use Permit will be to submit the Grading Permit to our Office for review and approval after the plan has been approved by DPW but prior to commencing any construction activities.

OCCL has discussed these issues with the applicants' representatives in a series of correspondences between March 2007 and January 28, 2008. These include:

- A March 16, 2007 correspondence with the architect that noted OCCL issues with the loggia;
- A June 7, 2007 correspondence regarding an earlier plan from OCCL, which noted concerns regarding the courtyard, gardens, and lanai;
- The October 26, 2007 Notice of Acceptance for Processing from OCCL, which called attention to the amount of grading and 925 square feet of development that OCCL thought might have been improperly excluded from the MDA;
- The December 12, 2007 regarding the end of the public comment period, where OCCL stated explicitly that the entry lanai, paved areas under roof, and makai lanai needed to be included in the MDA; and
- The January 28, 2008 FONSI submittal to OEQC, which was copied to the applicants' representative, which noted that OCCL had concerns regarding the MDA that still needed to be resolved and that the FONSI did not constitute an approval of the application.

Exhibit 9 contains these five correspondences.

The applicant has responded in writing twice to these concerns. On September 13, 2007, they put forward the following argument:

- That the interior courtyard should not be considered a living area as it will be planted with trees, and is not under a roof²;
- That the lanai in Garden 2 is not under a roof, and that the masonry walls do not close completely;
- That, in a meeting between OCCL and the architect in March, 2007, OCCL agreed with this conclusion³;
- That the makai lanai rests on finished grade, and that there is no roof, and therefore should not count⁴;
- That the enclosed area would not amount to more than 5615 square feet; and
- That the total graded area is approximately 21.3% of the lot area, and that the applicant does not consider this to be excessive.

² OCCL notes that HAR reads with *floor or roof structure*. The Site Plan shows that these areas have stone/decorative concrete floors.

³ OCCL notes that staff do not make decisions on design standard compliance in meetings.

⁴ OCCL notes that the Roof Plan shows that portions of the courtyard and the gardens, and the entirety of the makai lanai, are under roof.

On January 23, 2008 the applicant responded that *we do not agree that the entry lanai, the mauka lanai/garden, the mauka garden/shower area, the area around the central courtyard or the makai lanai should be included in the calculation of the Maximum Developed Area.*

Exhibit 10 contains these two correspondences.

Pursuant to HAR §13-5-13, the goal of the Resource Subzone is *to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.* Limiting house sizes in the Conservation District is one way of properly and sustainably managing lands in the Conservation District.

The applicant has submitted a plan with an enclosed space that surpasses 7000 square feet, using lanai, walled gardens, and courtyards to extend the actual living space. The applicant argues that these areas should not count towards the Maximum Developed Area calculations. This seems to be inconsistent with the intent of the Design Guidelines.

OCCL has noted a recent increase in applications that either approach or propose to exceed the MDA. We are concerned with the trend to request permits to build ever larger and more expansive residences in lands zoned *Conservation*. OCCL feels that the 5000 square-foot MDA for residences on one acre or more is amply liberal in a state where the overall average house size is 2000 square feet. OCCL also notes that, like all land uses within the Conservation District, we consider the maximum developable area to be a *conditional* rather than guaranteed use.

OCCL, therefore, believes in a conservative interpretation of the Residential Standards. Specifically, we would argue that:

1. Courtyards and walled gardens are *enclosed spaces*; and that therefore areas of such courtyards and gardens with floor or roof should be counted towards the MDA;
2. That lanai and decks resting on artificially created grade are *above grade*; that creating a grade in lieu of supporting the lanai on post and pier does not except it from being included in the MDA, and that therefore they should be included;
3. That porte-cochères, entry lanai, and other covered walkways are accessory structures that should be counted towards the MDA.

OCCL does not have issues with the proposed design per se, but only with the overall dimensions. We do not wish to set a precedence that would have the *de facto* effect of increasing the allowable size of residences in the Conservation District.

To date the applicant has chosen not to revise their plans to bring them into accordance with OCCL's position. OCCL would be willing to recommend approval of a similar design that was in compliance with the MDA and Design Guidelines.

Staff will recommend that the Board of Land and Natural Resources grant *preliminary* approval to the proposed residence **with the condition that the design will need to be first modified to bring it into compliance with HAR §13-5 EXHIBIT 4 SINGLE FAMILY RESIDENTIAL STANDARDS**, resubmitted, and approved by OCCL prior to any construction activities.

Staff also notes that the landscaping plans focus heavily on introduced species, and would recommend that the applicant give priority to appropriate native plants.

Therefore, staff recommends the following:

RECOMMENDATION:

That the Board of Land and Natural Resources APPROVE with conditions CDUA HA-3445 for the proposed McCully residence at Wailea, South Hilo, Hawai'i, TMK (3) 2-9-03:29, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawai'i Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
4. The applicant will modify the proposed design to bring it into compliance with HAR §13-5 EXHIBIT 4 SINGLE FAMILY RESIDENTIAL STANDARDS. The applicant should submit a conceptual design to OCCL for review and approval prior to the preparation of final construction plans, and prior to the commencement of any construction activities;
5. The applicant will get an approved Grading Permit from the County of Hawai'i Department of Public Works, and submit it to OCCL for review and approval prior to commencing with any construction activities;
6. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the

applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

7. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the residence and infrastructure must be completed within three years of the approval. It is understood that the reforestation plan is an ongoing project;
8. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
9. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
10. The applicant will use Best Management Practices for the proposed project;
11. The applicant will give preference towards using native plants all landscaping work;
12. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
13. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
14. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
15. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
16. The single family dwelling will not be used for rental or any other commercial purposes unless approved by the Board;
17. The applicant will contact OCCL for any permitting requirements should they change the scope of the project;
18. Other terms and conditions as may be prescribed by the Chairperson; and

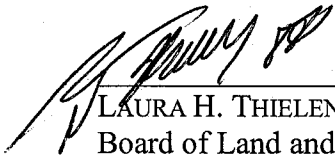
19. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,

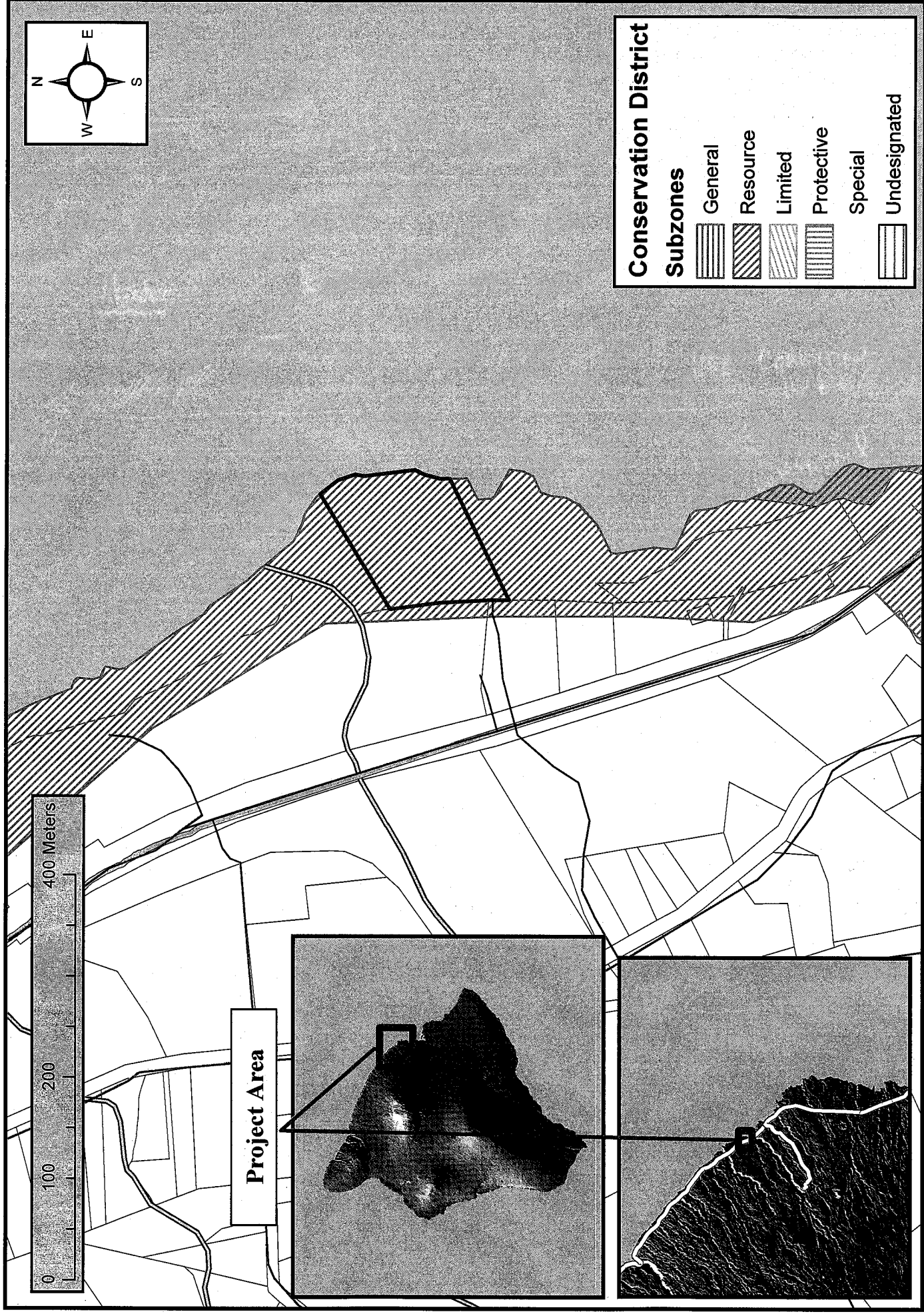


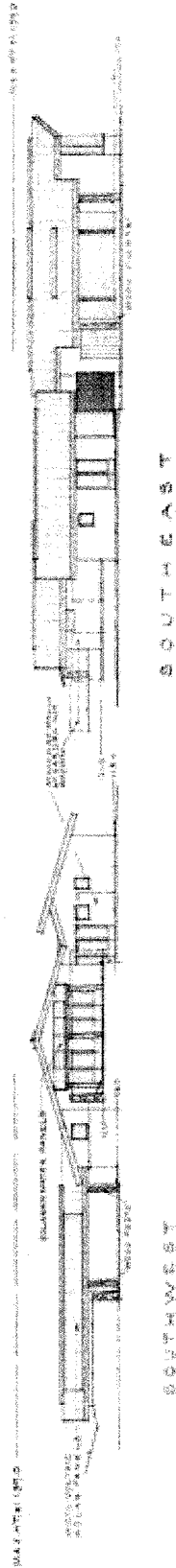
Michael Cain
Staff Planner

Approved for Submittal:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources





EXTERIOR ELEVATIONS

RESIDENCE FOR JIM & FRANK McCULLY

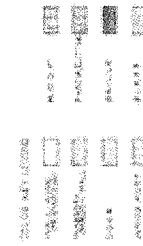
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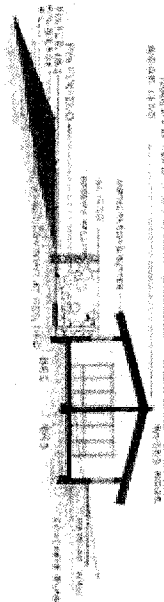
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OSBROPE, SPENCE & ROWLAND AFFECTED NONDUAL

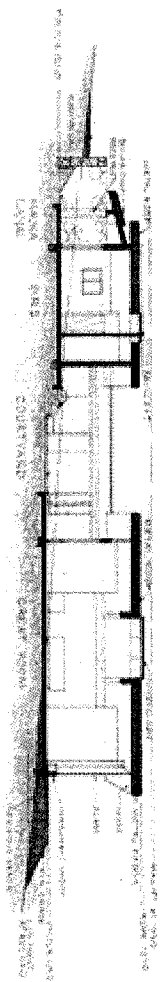
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2008年12月15日

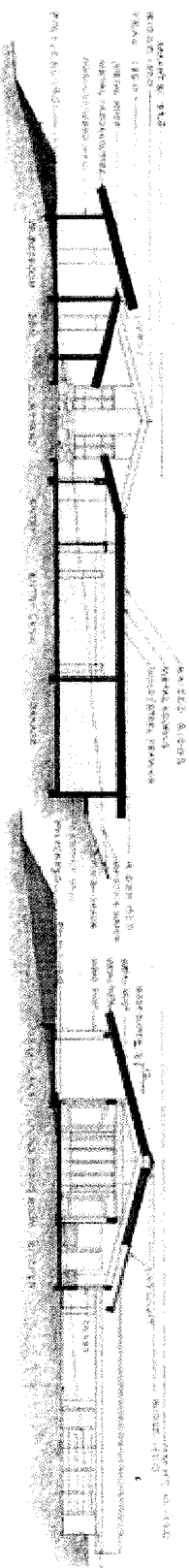




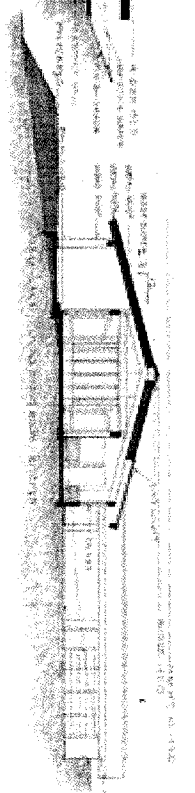
SECTION D



SECTION A



SECTION C



SECTION B

BUILDING CROSS SECTIONS

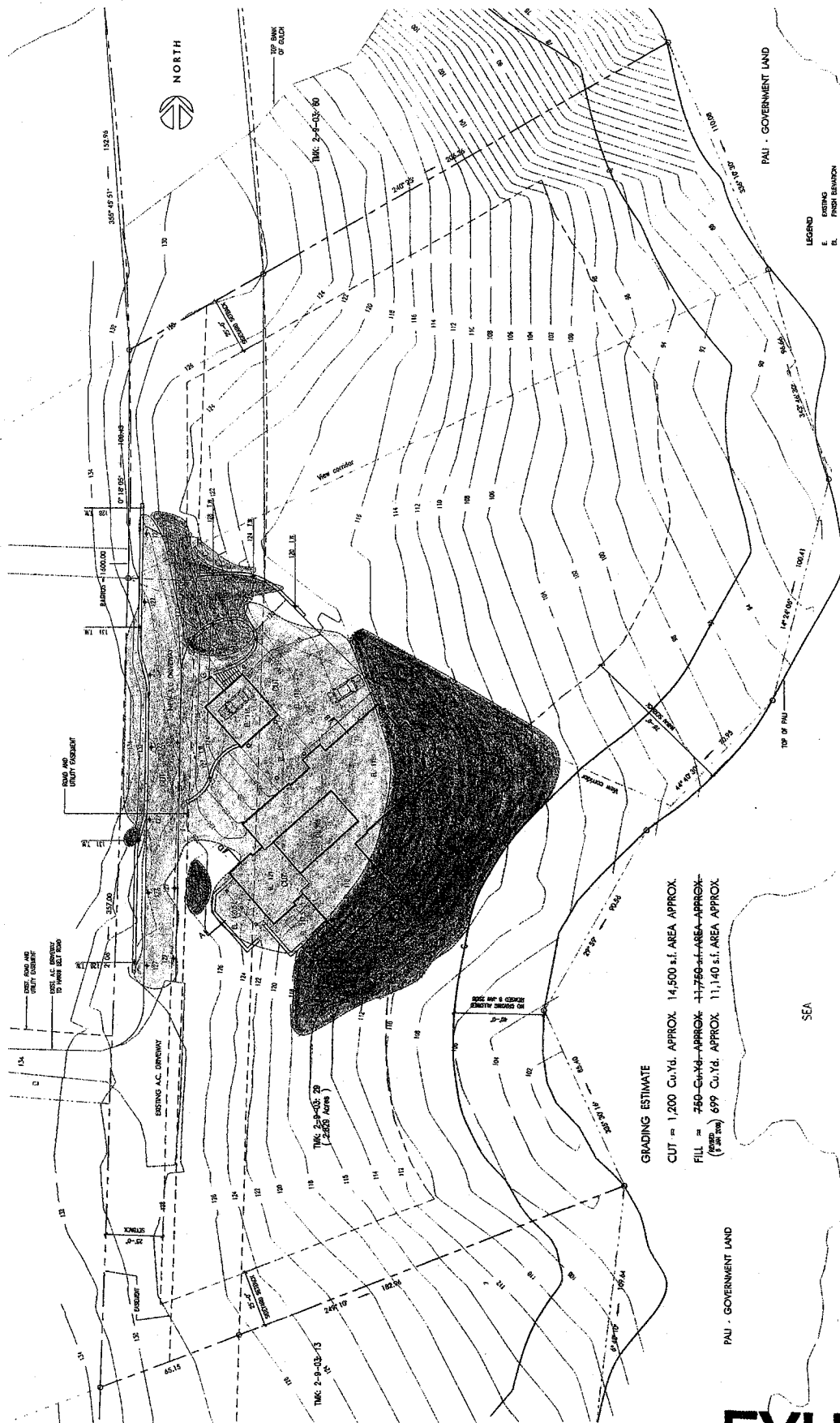
RESIDENCE FOR JIM & FRAN MCCULLY
 35-3805 MAHALELOA HIGHWAY WAILUA, HAWAII
 MAY 2000/21

SHEET 7 OF 8
 19 APRIL 2007

COLOR KEY

| | |
|-----------|-------|
| CONCRETE | WOOD |
| ROOF | GLASS |
| POUR FILL | LAND |





LEGEND

E EXISTING ELEVATION
T.W. TOP OF WALL
--- EXISTING GRADE - UNCHANGED
--- EXISTING GRADE - MODIFIED
--- NEW GRADE

PAU - GOVERNMENT LAND

SEA

SHORELINE 1000 FEET MARK

SCALE

COLOR KEY LEGEND

CUT

FILL

GRADING ESTIMATE

CUT = 1,200 Cu.Yd. APPROX. 14,500 s.f. AREA APPROX.

FILL = 250 Cu.Yd. APPROX. 11,750 s.f. AREA APPROX. (7500 sq. ft. 2500 Acres)

699 Cu.Yd. APPROX. 11,140 s.f. AREA APPROX.

SITE PLAN - SHOWING AREAS OF CUT AND FILL

RESIDENCE FOR JIM & FRAN McCULLY

29-3800 MAWALAHIA HIGHWAY WAILUA, HAWAII

TALK 2-9-03:29

OSSIPOFF, SNYDER & ROWLAND ARCHITECTS HONOLULU

SHEET 2 OF 8

19 APRIL 2007

REVISED 8 JAN 2008

EXHIBIT 3



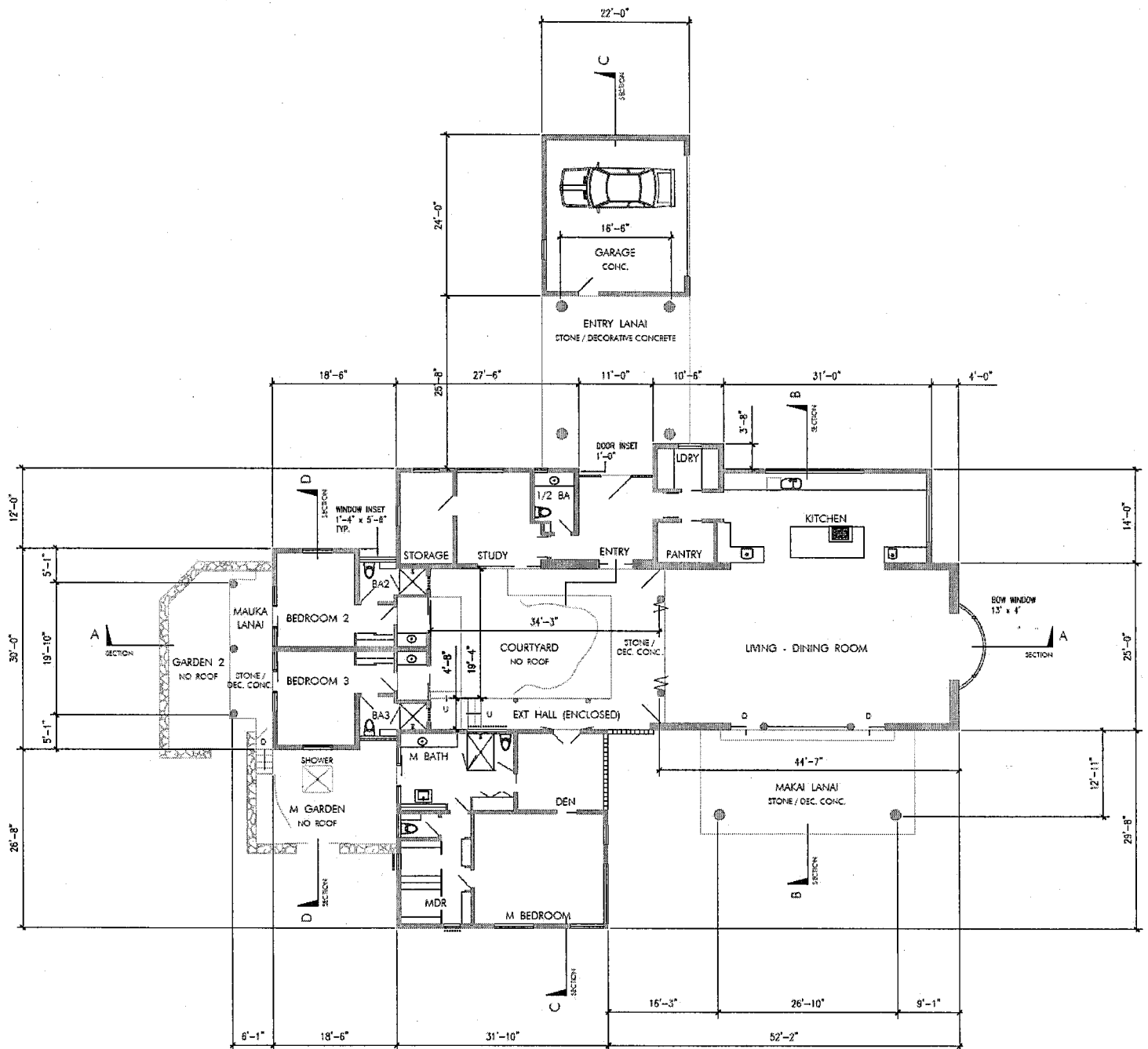


EXHIBIT 5

CALCULATIONS OF DEVELOPED AREA

| | <u>Applicant's
Figures</u> | <u>OCCL
Figures</u> | <u>Additional
Enclosed Space</u> |
|--------------------|-------------------------------------|-------------------------|--------------------------------------|
| Main Residence | 4162 ft ² | | |
| Garage | 528 ft ² | | |
| Interior Courtyard | (655 ft ²) ¹ | 200 ft ² | 455 ft ² (2) |
| Makai Lanai | (360 ft ²) | 360 ft ² (3) | |
| Entry Lanai | (436 ft ²) | 564 ft ² (4) | |
| Gardens | --- | 200 ft ² | 550 ft ² (5) |

TOTAL DEVELOPED AREA

| | |
|--|-------------------------|
| Applicant's Calculations: | 4690 square feet |
| OCCL's Calculations: | 6014 square feet |
| Additional Enclosed Space | 1005 square feet |
| Total Enclosed Area (Footprint) | 7019 square feet |

¹ Figures in parenthesis were not included in MDA by applicant

² Applicant did not provide a square footage for the interior courtyard. OCCL estimated the total area based upon the total floor space of the main residence (4790 square feet) less the applicant's reported MDA (4162 square feet), for a total of 655 square feet. Approximately 30% of the interior courtyard appears to be paved and under roof; hence, OCCL estimates that 200 square feet of the total should be counted towards the MDA.

³ The makai lanai is above grade (on an artificially created grade), has a stone/cement base, and is roofed. The total area under roof appears to be closer to 400 square feet.

⁴ The entry lanai, which contains a cement base and is roofed, and acts as an extension to the house and garage, has all the appearances of a porte-cochere, which OCCL has traditionally counted towards the MDA.

⁵ The gardens are private areas off of each of the bedrooms; OCCL maintains that the walls surrounding the gardens meet the definition of "enclosed." One contains an outdoor shower, which further supports the argument that this is a living space. The total area of the two gardens is 750 square feet. OCCL conservatively estimates that 20% of this area is either roofed or paved, including the 129 square foot "mauka lanai" that the application states is neither but the plans show to be both.

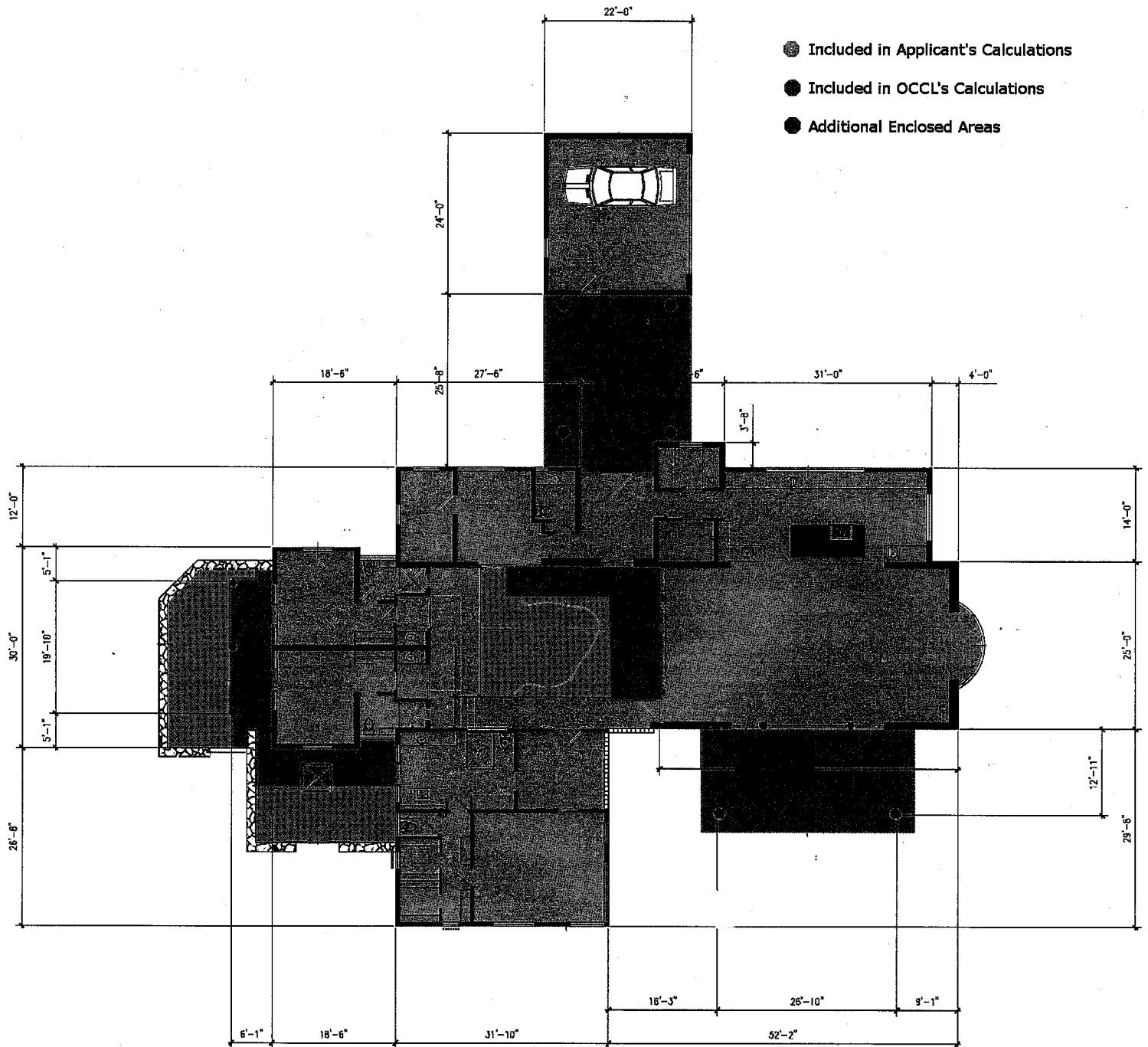
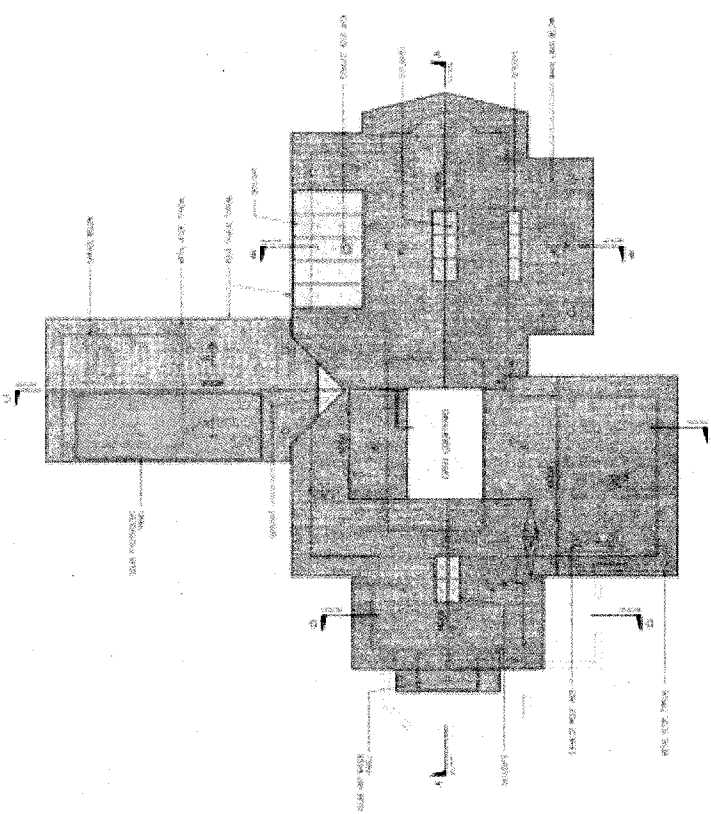


EXHIBIT 7



LEGEND
 R ROOF
 G GROUND
 V VENT

COLOR KEY LEGEND
 WHITE ROOFING
 GRASS
 SAND/PAVEMENT / PAVED DRIVE
 CONCRETE DRIVE



ROOF PLAN

RESIDENCE FOR JIM & FRAN MCCULLY

29-1805 KAMALANUOHI HIGHWAY WAILUA, HAWAII
 TAE 2700 1:20
 OSSIPOFF, SHYDER & ROWLAND ARCHITECTS HONOLULU

SHEET 6 OF 8
 19 APRIL 2007

Ossipoff, Snyder & Rowland
Architects

March 16, 2007

Jim McCully
40 Kamehameha Ave.
Hilo, HI 96720

Jim & Fran,

Today I met Sam Lemmo and presented the 3/15/07 site and floor plan. A copy is enclosed.

The pleasant news is Sam likes the plan and seemed comfortable with the new total of ± 4450 sq. ft. 'enclosed'. The 'Court' seems to get his attention but in our review of DLNR regulations regarding area clarification such space without a roof, without a floor and not enclosed on 3 sides should not count towards the 5000 sq. ft. max. The 'Loggia' at Courtyard should count as it has a roof, a floor and is enclosed (walled in) on 3 sides.

The 'Makai Lanai' as drawn is a problem. It is counted towards the 5000 sq. ft. max as it is not on grade. The answer then is to raise the grade - only about 1 foot so the Makai Lanai thus does not count. The Mauka Lanai and Entry Lanai are ok as long as they are on grade (they are) and open on 2 or 3 sides which they also are.

You and I need to review the Lanai and grading being proposed here to reach agreement regarding the design.

A cistern is ok and will not count towards the 5000 sq. ft. max.

As Sam Lemmo is now aware the boundary lines are being altered concurrently with the building application review. He says the property line should be relocated to give the 25' setback required. He can't see how a variance could be given at the same time approval is made for a boundary line relocation which creates the need for a variance.

Jim & Fran, I do not know what the boundary line revision may cost in time and treasure, but it must necessarily cause the surveyor to go on site, does it not. The foregoing statements are what I've assumed was said or intended at today's meeting. The soils tech engineer, Paul Weidig has received the request for a proposal of services. I expect to hear from him next week.

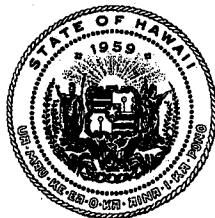
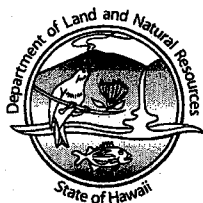
Sincerely,



Sidney E. Snyder, Jr., AIA

EXHIBIT 9

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

ALLAN A. SMITH
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

PETER T. YOUNG
DEPUTY DIRECTOR

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref: OCCL:MC

CDUA HA-3424

JUN - 7 2007

R. Ben Tsuzaki
Tsuzaki Yeh & Moore
85 W. Lanikaula Street
Hilo, HI 96720

SUBJECT: CDUA HA-3424 WITHDRAWAL
SINGLE FAMILY RESIDENCE
Wailea, South Hilo, Hawai'i
TMK: (3) 2-9-03:29

Dear Mr. Tsuzaki:

The Office of Conservation and Coastal Land (OCCL) has received your withdrawal letter regarding Conservation District Use Application (CDUA) HA-3424 for a proposed single-family residence at Wailea, South Hilo, Hawai'i.

As we discussed earlier with the applicants and their representatives, OCCL had a number of concerns with the applications.

OCCL would like to note that single-family residences requires an Environmental Assessment (EA). The application contained an EA for a consolidation and re-subdivision which did not evaluate the merits of the proposed residence. The EA needs to address the project in question. It should be a stand-alone document. You can find guidelines for completing an EA at the Office of Environmental Quality Control's website at www.state.hi.us/health/oeqc.

The application and EA should also include floor plans that clearly show the dimensions of the structure. OCCL was unable to confirm your calculations of the developed area based upon the submitted plans.

OCCL also has concerns regarding the overall footprint of the structure, and whether these conform to the Residential Standards. These include:

- An interior courtyard measuring approximately 360 square feet. This could be considered a 'living area.'
- Two walled gardens that are partially covered by a roof. One has a 129 square foot lanai, and the other seems to serve as an outdoor shower. While the plans refer to these as part of the lawn, they are enclosed by walls and appear closer in style to an outdoor room. The areas of the courtyards under the roof should be counted as part of the MDA.

- A 360 square foot lanai that would rest above grade (and thus be part of the Maximum Developable Area, or MDA). The plans show that the area below the lanai will be filled to bring the lanai to grade and outside of the MDA, which seems to go against the intent of the guidelines.

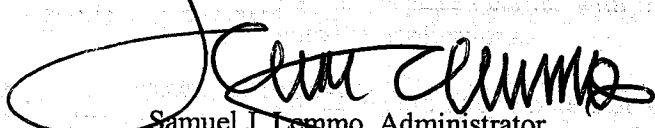
The application calculated the MDA at 4690 square feet, which is below the maximum set in the standards. However, the inclusion of the lanai, enclosed gardens, and courtyards bring the total footprint of the structures closer to the range of 6500 to 7000 square feet – an increase of 25 to 50 %. OCCL could not compute the exact dimensions based upon the scale given, but even the most conservative estimate represents a significant increase in the project's footprint.

OCCL would like to note that, pursuant to Exhibit 4 of Hawai'i Administrative Rules §13-5, the Residential Standards require that *grading/contouring be kept to a minimum with consideration of slope*. The project as submitted would require 1200 cubic yards of cut and 750 cubic yards of fill. Much of this is due to large footprint. OCCL does not believe that grading and contouring have been kept to a minimum. You should minimally provide clear and reasonable justification of the need for so much grading.

OCCL would also like to note that the Board of Land and Natural Resources, who have the ultimate authority to grant, deny, or amend Conservation District Use Permits, have been amending landscaping plans so that they only include native and indigenous flora.

We have retained one set of documents for our files. The others are available at our front desk to be picked up. Should you have any further questions, please contact Michael Cain of the OCCL at 587-0048.

Sincerely,

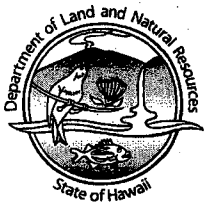


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

cc: Chair

Sid Snyder, Ossipoff, Snyder & Rowland Architects, 925 Bethel St Suite 315, Honolulu HI, 96813

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref: OCCL:MC

File NO.: CDUA HA-3445

Acceptance Date: October 17, 2007
180-Day Expiration Date: April 14, 2008

Ben Tsukazaki
85 W. Lanikāula St.
Hilo, HI 96720

OCT 26 2007

Dear Mr. Tsukazaki,

**NOTICE OF ACCEPTANCE and
PRELIMINARY ENVIRONMENTAL DETERMINATION**

**Conservation District Use Application (CDUA) File No. HA-3445
(BOARD Permit)**

This acknowledges the receipt and acceptance for the processing of your CDUA for the proposed single family residence (SFR) located at Wailea, South Hilo, Hawai'i, TMK: (3) 2-9-03:29. The 2.829 acre property is in the Resource Subzone of the State Land Use Conservation District.

The coastal parcel is approximately 14.7 miles north of Hilo. Access is via a 360-foot long easement running off the Hawai'i Belt Road. It is bounded on the makai side by a 100 to 140 foot pali, on the north by a steep gulch and Pū'ahanui Stream, and on the west by four parcels in the Agriculture District. The land is currently vacant. It had previously been used for sugar cane cultivation, and has remained fallow since 1992. The parcel is dominated by grass, with a stand of eucalyptus, ironwood, and hala along the pali. There are scattered collections of bamboo and ornamentals on the property.

You are requesting a Conservation District Use Permit (CDUP) for a single-family residence and associated landscaping. The dwelling consists of a 3 bedrooms, 3.5 bathrooms, 3 lanai, a central courtyard, garage, and kitchen. Your calculations provide a developed area of 4690 square feet. OCCL has concerns regarding the 925 square feet of lanai, enclosures, and walled gardens that were excluded from the calculations, and will be evaluating the application

Grading for the project will involve 1200 cubic yards of cut. According to the information you provided, this is due in part to accommodate the maximum setback from the shoreline pali and in part to decrease the visibility of the residence from the road.

The proposed landscaping involves a mix of native and ornamental plants. The plans call for the trees along the pali to remain, and a boundary of small canopy trees and palms. The mainpart of the lawn will remain grassy.

After reviewing the application, we find that:

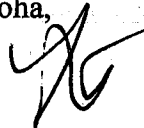
1. The SFR is an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24 *Identified land uses in the resource subzone, R-8 Single Family Residence, (D-1)*. This use requires a permit from the DLNR. The final decision as to whether to grant or deny the permits lies with the Board of Land and Natural Resources (BLNR).
2. Pursuant to HAR §13-5-40 *Hearings*, no public hearing will be required.
3. Pursuant to HAR §13-5-31 *Permit applications*, the permit requires that an environmental assessment be carried out. A Finding of No Significant Impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment (DEA) for the project will be submitted to the Office of Environmental Quality Control (OEQC) to be published in the November 8, 2007 issue of the *Environmental Notice*.

Our office has questions on some of the house design elements that were not included in the calculations for developable area. Part of our analysis will be researching past permits to determine if the Board has set any precedents have been set on interior courtyards and enclosed gardens.

The filing fee for Board Permits is \$100. We are returning your check for \$400 to you (No. 13026 Tsukazaki Yeh & Moore). Please resubmit one for \$100, made payable to the State of Hawai'i.

Should you have any questions, please contact Michael Cain at the Office of Conservation and Coastal Lands staff at 587-0048.

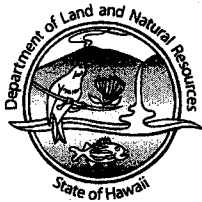
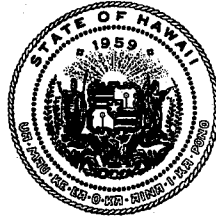
Aloha,



LAURA H. THIELEN, Chair
Board of Land and Natural Resources

cc: Office of Hawaiian Affairs
Hawai'i County Planning Department
Hawai'i County Department of Public Works
DLNR- Forestry, Land Division, Historic Preservation
Hilo Library
DOH - Office of Environmental Quality Control

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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LAND
STATE PARKS

Ref: OCCL:MC
File NO.: CDUA HA-3445

Acceptance Date: October 17, 2007
180-Day Expiration Date: April 14, 2008

Ben Tsukazaki
85 W. Lanikāula St.
Hilo, HI 96720

DEC 12 2007

Dear Mr. Tsukazaki,

SUBJECT: END OF COMMENT PERIOD
Conservation District Use Application (CDUA) HA-3445
Single Family Residence
Wailea, South Hilo, Hawai'i
TMK (3) 2-9-03:29

This letter is regarding the processing of CDUA HA-3445. The public and agency comment period on your application has closed. Attached to this letter are copies of the comments received by the Office of Conservation and Coastal Lands (OCCL) regarding your CDUA.

OCCL staff have additional concerns regarding the application.

- 1) Your calculations provide a Maximum Developed Area (MDA) of 4690 square feet. OCCL believes the MDA was not calculated correctly. Based on the representations in your site plan the following elements should be included in calculating the MDA:
 - The entry lanai, which has all the appearances of a carport or porte-cochère.
 - The paved areas and areas under roof on the mauka lanai / garden, the mauka garden / shower room, and around the central courtyard.
 - The makai lanai, which rests on a grade that is artificially created. A post and pier or above grade lanai would count as developed area; OCCL does not consider creating a fill to be a valid way to exempt a deck from being "above grade."
- 2) Grading for the project will involve 1200 cubic yards of cut, and the amount of graded or filled area appears to cover close to 25% of the total parcel area. OCCL has concerns about both the amount of grading required and the paucity of information regarding mitigating any potential impacts this might have (e.g. How will the filled areas be secured? Will there be a retaining wall? What practices will be used to prevent runoff during the area's frequent rains?).

OCCL rarely encounters applications that require this extensive of cut and fill near the shore. Please remember that a standard condition of all permits is that an applicant comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments. OCCL recommends that the applicant consult with the State Department of Health to determine if the amount of grading triggers need for permit.

Please send copies of your responses to the questions raised in these letters directly to the authoring agency as well as to the OCCL.

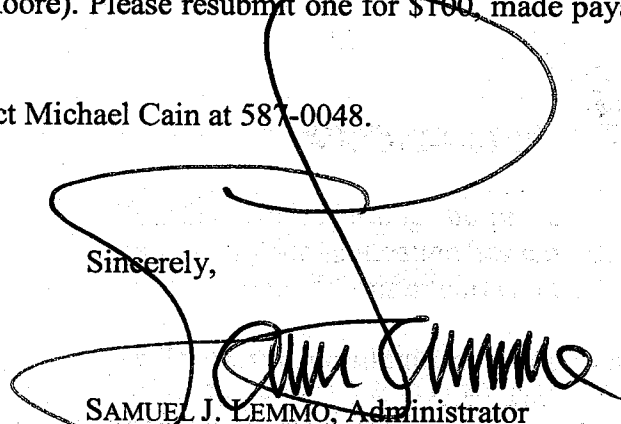
Please submit either 1) six paper copies of the Final EA, or 2) four paper copies and one digital copy. We also request that you submit a new project summary to the Office of Environmental Quality Control along with the Final EA. Proposed future uses of the parcel are not part of this application, and do not need to be discussed.

Early submittal of your responses and the Final EA will expedite the review process.

OCCL also notes that the filing fee for Board Permits is \$100. We are returning your check for \$400 to you (No. 13026 Tsukazaki Yeh & Moore). Please resubmit one for \$100, made payable to the State of Hawai'i.

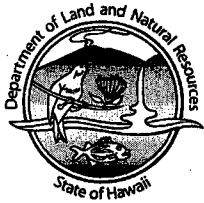
Should you have any questions, please contact Michael Cain at 587-0048.

Sincerely,



SAMUEL J. LEMMO, Administrator
Office of Conservation and Coastal Lands

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

JAN 28 2008

TO: Laurence K. Lau, Deputy Director
Environmental Health
Office of Environmental Quality Control

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: Final Environmental Assessment (FEA)/Finding of No Significant Impact
(FONSI) for CDUA HA-3445

The Department has reviewed Conservation District Use Application (CDUA) HA-3445 and the Final Environmental Assessment (FEA) for the McCully Single Family Residence located at Wailea, South Hilo, Hawaii, TMK: (3) 2-9-03:29. The Draft Environmental Assessment (DEA) for CDUA OA-3446 was published in OEQC's November 8, 2007 *Environmental Notice*.

The FEA is being submitted to OEQC. We have determined that this project will not have significant environmental effects, and have therefore issued a FONSI.

OCCL has ongoing issues with the applicant regarding the applicant's computation of the Maximum Developed Area. The applicant provides a Maximum Developed Area (MDA) of 4690 square feet. OCCL believes that the MDA should also include the entry lanai, the paved areas under roof on the mauka lanai / garden, the mauka garden / outdoor shower, and around the central courtyard, and the makai lanai. This FONSI does not constitute approval of the CDUA; authority to grant or deny the final permit lies with the Board of Land and Natural Resources.

Please publish this notice in OEQC's upcoming February 8, 2007 *Environmental Notice*. We have enclosed two hard copies and one digital copy of the FEA. The OEQC Bulletin Publication Form is attached. Comments on the draft EA were sought from relevant agencies and the public, and were included in the FEA.

Please contact Michael Cain of our Office of Conservation and Coastal Lands staff at 587-0380 if you have any questions on this matter.

c: Ben Tsukazaki, 85 W. Lanikāula St., Hilo, HI 96720

Tsukazaki Yeh & Moore
ATTORNEYS AT LAW
A LIMITED LIABILITY LAW COMPANY

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AND COASTAL LANDS

2007 SEP 26 P 12: 06

September 13, 2007

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Mr. Samuel Lemmo, Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
State of Hawai'i
Post Office Box 621
Honolulu, Hawai'i 96809

Re: Conservation District Use Application
Draft Environmental Assessment
Applicant: James W. & Francine M. McCully
Tax Map Key No.: (3) 2-9-003: 029
Wailea, South Hilo District, Island of Hawai'i

Dear Mr. Lemmo:

On behalf of our clients, James W. and Francine M. McCully ("Applicant"), this is to transmit a revised Conservation District Use Application ("CDUA") and related materials to allow the construction of a single-family dwelling in the Conservation District on Tax Map Key ("TMK") No.: (3) 2-9-003: 029, Wailea, South Hilo District, Island of Hawai'i.

The initial CDUA and related materials were submitted to your office on May 4, 2007. Due to certain comments on the Draft Environmental Assessment ("DEA") and the actual design on the proposed dwelling made by yourself and reviewing staff directly to the Applicant's representatives, the decision was made to withdraw the initial application. The withdrawal was requested by letter dated May 31, 2007. Subsequently, we received a letter noting the comments and concerns that your office had with the CDUA and DEA. Based upon your letter of June 7, 2007, as well as upon subsequent discussions and consultation with yourself and staff, we have revised the CDUA and DEA and resubmit them at this time.

By this letter, we would also like to provide responses to the comments presented in your June 7, 2007 letter. Those comments are provided in italicized font, and the Applicant's responses follow directly below, in regular font.

1. *The application contained an [Environmental Assessment] for a consolidation and re-subdivision which did not evaluate the merits of the proposed residence. The EA needs to address the project in question. It should be a stand-alone document.*

The DEA has been revised to include additional information regarding the proposed single-family dwelling and its potential impacts. It is being resubmitted along with the revised CDUA and related documents.

EXHIBIT 10

2. *The application and EA should also include floor plans that clearly show the dimensions of the structure. OCCL was unable to confirm your calculations of the developed area based upon the submitted plans.*

One set of eight full size sheets of preliminary construction drawings with a graphic scale, including a floor plan, were submitted to OCCL as part of the CDUA. 11" x 17" reductions of the same drawings were included in Appendix B of the bound CDUA copies. However, these same reduced drawings were not included in the initial DEA.

In order to present the information more clearly, an addendum sheet (Sheet 5A) has been prepared which includes the specific dimensions on a floor plan.

A full size copy of Sheet 5A is included in this submittal, as well as in the reduced copies included in the bound CDUAs. In addition, a full set of the same drawings has now been added to the revised DEA as Appendix B of that document.

3. *OCCL has concerns regarding the 360 square foot interior courtyard could be considered a "living area".*

The Applicant does not agree that the interior courtyard could be considered a living area. It is proposed to be planted with various trees, shrubs and plants and is not under cover of a roof. Under Exhibit 4 of Hawai'i Administrative Rules ("HAR") Chapter 13-5 ("Single Family Residential Standards"), the Maximum Developable Area ("MDA") for the subject lot is 5,000 square feet of floor area. The floor area computation includes "all enclosed (on three sides minimum, with floor or roof structure above) living areas..." (emphasis added). Again, the interior courtyard is not under a roof structure.

4. *OCCL has concerns regarding the two walled gardens that are partially covered by a roof. One has a 129 square foot lanai, and the other seems to serve as an outdoor shower. While the plans refer to these as part of the lawn, they are enclosed by walls and appear closer in style to an outdoor room. The areas of the courtyards under the roof should be counted as part of the MDA.*

As depicted on the Floor Plan, Garden 2, which extends from the 129 square foot lanai, is not under the cover of a roof. It is also on grade. A masonry wall encloses most of three sides, although the wall section enclosing the makai side does not close completely. The "M Garden", which includes the shower, is enclosed on most of four sides (two by masonry wall), but is not under any type of roof structure. Again, under Chapter 13-5, HAR, Exhibit 4, the floor area computation should not include these areas as there is no roof covering the space.

In addition, during discussions between yourself and the architect in March of this year, you agreed that these areas would not be counted as part of the floor area under the Single Family Residential Standards, because they are not under the cover of a roof structure.

5. *OCCL has concerns regarding the 360 square foot lanai that would rest above grade (and thus be part of the Maximum Developable Area, or MDA). The plans show that the area below the lanai will be filled to bring the lanai to grade and outside of the MDA, which seems to go against the intent of the guidelines.*

The 360-square foot lanai would rest on slab at finished grade. Finished grade rests on fill approximately four to five feet above the existing grade. There is no roof cover, and it is open on three sides.

The present concept was decided upon in order to significantly minimize the visual impact of the lanai and allow it to blend into the surroundings. Other alternative concepts included a roofed deck above existing grade resting on posts, which would likely also have included a masonry wall or spaced boards between the posts. This concept was avoided due to unsightliness and associated negative visual impacts. Much thought was given to the present design and how to blend the structures into the land as much as possible, in keeping with the intent of the Conservation District and preservation of coastal lands.

Based on the above, the Applicant believes that this lanai area should not be included in the MDA. Again, under Chapter 13-5, HAR, Exhibit 4, the floor area computation should not include this areas as there is no roof covering the space. In addition, it rests at finished grade. Additionally, the Standards mandate that the structures should be compatible with surrounding environs. The present design provides a lanai that will be compatible with the surrounding area and significantly more compatible than the alternatives considered.

6. *The application calculated the MDA at 4690 square feet, which is below the maximum set in the standards. However, the inclusion of the lanai, enclosed gardens, and courtyards bring the total footprint of the structures closer to the range of 6500 to 7000 square feet – an increase of 25 to 50%. OCCL could not compute the exact dimensions based upon the scale given, but even the most conservative estimate represents a significant increase in the project's footprint.*

The Applicant does not agree that the walled gardens, the interior courtyard or the lanai should be included in the computation of the MDA for the reasons stated above. The MDA has been calculated by the architect at 4,690 square feet based on the Single Family Residential Standards and several discussions with yourself and your review of the present drawings. The proposed structure also includes 925 square feet of area (including the walled gardens, the interior courtyard and the lanai) that is excluded from the computation of the MDA based on the Standards. Even if the

excluded area were included, the total floor area would only amount to 5,615 square feet and not the 6,500 to 7,000 square feet that your letter asserts.

In order to assist your staff in their review of the drawings, Sheet 5A has been prepared and enclosed, which includes specific dimensions on the floor plan as well as a graphic scale.

7. *OCCL would like to note that, pursuant to Exhibit 4 of the Hawai'i Administrative Rules §13-5, the Residential Standards require that grading/contouring be kept to a minimum with consideration of slope. The project as submitted would require 1200 cubic yards of cut and 750 cubic yards of fill. Much of this is due to large footprint. OCCL does not believe that grading and contouring have been kept to a minimum. You should minimally provide clear and reasonable justification of the need for so much grading.*

TMK: (3) 2-9-003: 029 is approximately 2.83 acres or 123,274 square feet. A grading area of approximately 26,250 square feet would be 21.3% of the lot area, less than a quarter of the land area, and does not appear to be extensive. A portion of the proposed grading has been implemented in order to limit the use of retaining walls, although retaining walls are proposed for the driveway and the garage exterior wall. Placing retaining walls at the perimeter of the house may lessen fill, but counter the architect's and Applicant's primary goal of blending into the site. Mass grading was not considered, except for in the areas of the driveway and the actual housepad and immediately adjacent areas in order to achieve a smooth transition between natural and finished grades.

8. *OCCL would also like to note that the Board of Land and Natural Resources, who have the ultimate authority to grant, deny, or amend Conservation District Use Permits, have been amending landscaping plans so that they only include native and indigenous flora.*

Should the Board of Land and Natural Resources require the exclusive use of native and indigenous flora, the Applicant will revise the Landscape Master Plan accordingly.

Accordingly, please find enclosed the following items:

1. Original and twenty copies of a revised CDUA;
2. Original and twenty copies of a revised DEA;
3. Determination from the County of Hawai'i that the construction of the single-family dwelling is exempt from the requirement for a Special Management Area Use Permit;
4. A letter dated July 9, 2007, from Sid Snyder, the architect, to myself responding to the comments contained in the June 7, 2007, letter from your office;

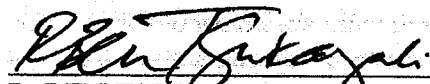
5. One set of colored, full size preliminary architectural drawings (including Sheet 5A, which is a black and white floor plan showing dimensions);
6. One disk containing the .jpg files for the preliminary architectural drawings;
7. Filing fee in the amount of \$400.00 (\$100 application fee plus \$300 for 2.8 acres of potential developed area);
8. Four additional copies of the revised DEA for transmittal by your office to the Office of Environmental Quality Control ("OEQC") for publication in the Environmental Bulletin;
9. A draft transmittal letter for use by your office in such transmittal to OEQC;
10. A Project Summary for transmittal to OEQC; and
11. A CD containing .pdf files of the entire submittal.

Again, the enclosed preliminary architectural drawings have been prepared by Sid Snyder of Ossipoff, Snyder & Rowland Architects, and Mr. Snyder is authorized by the Applicant to consult directly with your office should you require any additional information relating to the drawings.

We appreciate your timely review of the enclosed materials. Thank you for your time and attention to this matter. Please do not hesitate to contact me at (808) 961-0055 should you have any questions or require any additional information.

Very truly yours,

TSUKAZAKI YEH & MOORE
A Limited Liability Law Company.



R. BEN TSUKAZAKI
Attorney and Agent for Applicants

RBT:nl

Enclosures

cc: James & Francine McCully
Sid Snyder

Tsukazaki Yeh & Moore

ATTORNEYS AT LAW
A Limited Liability Law Company

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2008 JAN 24 P 2: 16

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

January 23, 2008

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawai'i
Post Office Box 621
Honolulu, Hawai'i 96809

Re: Conservation District Use Application (CDUA HA-3445)
Draft Environmental Assessment
Applicant: James & Francine McCully
Request: Construction of Single-Family Residence
TMK No.: (3) 2-9-003: 029
Wailea, South Hilo District, County of Hawai'i

Dear Mr. Lemmo:

On behalf of the McCully's ("the Applicant"), this is to transmit the following:

1. Six paper copies of the Final Environmental Assessment ("FEA");
2. OEQC Publication Form (including revised Project Summary);
3. Two CDs, each containing a .pdf file of the complete FEA, including OEQC Publication Form;
4. One full-size copy of *Site Plan - Showing Areas of Cut and Fill* (sheet 2 of 8 of Appendix B);
5. One full-size copy of *Grading Cut and Fill* (sheet 3 of 8 of Appendix B); and
6. Filing Fee of \$100.00 (Check No. 13529).

Based on comments received during the public comment period, we made certain revisions in order to finalize the subject Environmental Assessment ("FEA"). Comment letters were received from the State of Hawai'i Office of Hawaiian Affairs and the County of Hawai'i Planning Department, both of which are included in the FEA in Appendix A2. Responses to those letters were mailed to the commenting agency with a copy to the Office of Conservation and Coastal Lands ("OCCL") on January 18, 2008.

Mr. Samuel J. Lemmo
January 23, 2008
Page No. 2

In response to the substantive comments and concerns raised by the Planning Department, the *Site Plan – Showing Areas of Cut and Fill* (sheet 2 of 8 of Appendix B) and the *Grading Cut and Fill Plan* (sheet 3 of 8 of Appendix B) were revised to eliminate grading seaward of the construction barrier to be placed 40 feet inland from the top of the pali. Textual revisions were also made to clarify that no land alteration would occur seaward of this construction barrier. Additionally, textual revisions were made to Section 2.1.9 (Scenic Resources) to include expanded discussion of potential impacts to scenic resources.

In response to additional comments provided by OCCL by letter dated December 12, 2007, based upon the language of Exhibit 4 of Hawai'i Administrative Rules ("HAR") Chapter 13-5 ("Single Family Residential Standards") as well as the project architect's consultation meetings with you, we do not agree that the entry lanai, the mauka lanai/garden, the mauka garden/shower area, the area around the central courtyard or the makai lanai should be included in the calculation of the Maximum Developed Area ("MDA").

Regarding the OCCL comment relating to the grading area, Section 1.5.1 (Project Concept) has been revised in response to the County Planning Department's comments. As stated in that section, the grading area is approximately 25,640 square feet, which comprises approximately 20.8% of the total land area of TMK No: (3) 2-9-003: 029. The Applicant intends to comply with all applicable rules and regulations relating to the construction of the residence, including rules and regulations requiring the retention and disposal of all project-related runoff onsite. As stated in Section 2.1.2 of the FEA (Soils), retaining walls are proposed for the driveway and the exterior wall of the garage.

In relation to the recommendation that the Applicant consult with the Department of Health ("DOH") regarding the need for a grading permit, the applicant has already established that a grading permit will need to be obtained from the County of Hawai'i Department of Public Works – Engineering Division as the amount of cut and fill is in excess of 100 cubic yards. Please see Section 1.5.3 of the FEA (Listing of Permits and Approvals) for a list of permits and approvals that the Applicant has determined to be necessary for construction of the proposed dwelling. The Project does not require a National Pollution Discharge Elimination System Permit from DOH as the grading area is not in excess of one acre.


Tsukazaki Yeh & Moore
ATTORNEYS AT LAW
A Limited Liability Law Company

Mr. Samuel J. Lemmo
January 23, 2008
Page No. 3

Thank you in advance for your time and attention to this matter. Please do not hesitate to contact me should you require any additional information.

Very truly yours,

TSUKAZAKI YEH & MOORE
A Limited Liability Law Company.



R. BEN TSUKAZAKI
Attorney and Agent for the Applicant

RBT:mb

Cc: Jim & Francine McCully
Sid Snyder, Ossipoff, Rowland & Snyder Architects